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Immigration, Global Poverty and the Right to Stay¹

Abstract: This article questions the use of immigration as a tool to counter global poverty. It argues that poor people have a human right to stay in their home state, which entitles them to receive development assistance without the necessity of migrating abroad. The article thus rejects a popular view in the philosophical literature on immigration: that, when fulfilling their duties to assist the global poor, rich states are free to choose between assisting poor people in their home states and admitting them as immigrants. Since the human right to stay is entailed by values that feature prominently in the philosophical debate on immigration, the article further contends that participants in that debate have particular reason to reject the popular “choice view” and endorse the alternative position presented in the article.

Should rich states use immigration as a means to address global poverty? A common answer to this question is that rich states have a choice: they can either admit poor foreigners as immigrants or they can provide alternative means of assistance, such as development aid, to poor people in their home states. Interestingly this “choice view” finds support from both sides in the immigration debate, that is, both from theorists who criticise immigration restrictions and theorists that defend. This article argues against the choice view. If rich states can, without severe cost, assist poor people in their home states, then rich states must do so. To pursue an immigration-based solution to poverty when alternative means of assistance can be implemented without severe cost, is to perform an injustice, for it violates the human right people have to stay in their own state. This human right to stay is entailed by the values of freedom of movement, cultural membership and territorial attachment. Since it is these values that feature prominently in the immigration debate, both sides in that debate should reject the choice view. The article thus seeks to forge a new consensus on the question of immigration as a tool against poverty. Whatever one’s stand regarding the justice of immigration restrictions,

¹ Previous drafts of this article were presented at workshops in Oxford, Louvain la Neuve and Stanford and I am very grateful for the comments I received. In addition, I owe thanks to Daniel Butt, Simon Caney, Matthew Gibney, Allegra McLeod, Leif Wenar and the three anonymous reviewers for their perceptive and valuable criticism.

all should agree that rich states should not use immigration as an alternative to seeking to assist poor people in their home states.

The first section sets out the debate regarding the justice of immigration restrictions. The second shows that something of a consensus has formed around the idea that rich states are free to choose between immigration and alternative means of assistance when fulfilling their duties to assist the global poor. The third and fourth sections argue against this consensus view. The third section argues that people have a human right to stay in their home state and explains why both sides in the immigration debate have reason to support this human right. The fourth section defends the claim that the human right to stay entails a duty to assist poor people in their home state.

The Immigration Debate

This article will remain neutral regarding the debate over whether immigration restrictions are just. Nevertheless, the choice view, that rich states are morally free to choose between admitting poor people as immigrants and assisting them in their home state, has emerged from the debate over the justice of immigration restrictions and this article is partly addressed to the participants in that debate. It is thus helpful to review the immigration debate in this section before turning directly to the choice view in the next.

Theorists opposing immigration restrictions have made two main arguments against them: one from poverty, the other from freedom. The poverty argument holds that rich states have a duty to assist people in poor states and that, under current circumstances, immigration restrictions conflict with this duty since they deny poor people one means to improve their lot (Bader, 2005, pp. 342-344; Carens, 1992, pp. 26-

27; Goodin, 1992, pp. 7-9; Kukathas, 2005, p. 211). The first premise of this argument, that rich states have a duty to assist people in poor states, is widely shared, although theorists disagree over how extensive this duty is. On an egalitarian view, rich states have a duty to help people in poor states achieve some form of distributive equality with their own citizens (Beitz, 1999, pp. 125-176; Caney, 2005, pp. 102-147; Moellendorf, 2002, pp. 7-101; Pogge, 1989, pp. 240-280). On a sufficiency view, rich states need only assist people in poor states to reach a minimal level of wellbeing, for instance one which allows them to meet their basic needs to food, shelter, medical care and so forth (Blake, 2001; Miller, 2007, pp. 163-200; Rawls, 1999, pp. 105-120). While theorists who criticise immigration restrictions tend to adopt the egalitarian view and theorists that defend them, the sufficiency view, this dispute is not so important to the success of the poverty argument. In today's world there are billions of people too poor to satisfy their basic needs, so even if we adopt the sufficiency view, the poverty argument remains an important challenge to current immigration restrictions.

The second premise of the poverty argument, that, under current circumstances, immigration restrictions conflict with the duty rich states have to assist people in poor states, may seem more controversial. After all, there are alternative means, such as development aid, by which rich states can seek to assist poor people in their own states and some argue these alternative means are more effective than immigration at relieving poverty.² However, theorists making the poverty argument do not deny that there may be

² There is an important empirical debate over the relative merits of immigration as a means to address global poverty when compared to other measures such as development aid, trade, foreign direct investment, and debt cancellation. For the view that immigration is relatively ineffective see Brock, 2009; Pogge, 1997. For the view that immigration can make an important contribution to poverty eradication see Acosta, Calderon, Fajnzylber and Lopez, 2008; Adams and Page, 2005. For a review of the literature see Page and Plaza, 2006. This article remains neutral regarding this empirical debate. The argument made here is not that immigration is a less effective means of addressing poverty but that even if it was no less effective than

alternative means to assist people in poor states. Their point rather is that under current circumstances rich states are failing to fulfil their duties to people in poor states via these alternative means. This failure may reflect problems of misgovernment in poor states preventing assistance getting through or a lack of political will on the part of rich states to provide the necessary assistance, but in either case the duties that rich states owe to assist poor people remain unfulfilled. If rich states cannot or will not assist poor people in their home states then rich states must admit them as immigrants.

While the poverty argument objects to immigration restrictions because they prevent poor people from improving their lot, the freedom argument objects to immigration restrictions simply for restricting freedom of movement. Those making the freedom argument note the importance that is awarded to the right to freedom of movement *within* states: for instance, the fact that the human right to domestic freedom of movement is listed in the Universal Declaration of Human Rights and a number of other international human rights documents. Freedom of movement within states, it is held, is important as it allows people to access a free range of options regarding such matters as who they marry, which job they take, which religions or associations they join etc. Since marriage partners, jobs, religions and associations exist in foreign states as well as within one's home state, moral consistency seems to demand recognition of a right to immigrate alongside the right to domestic freedom of movement (Carens, 1987, p. 258; Dummett, 1992, p. 173; Moellendorf, 2002, pp. 61-62).

The poverty argument and the freedom argument are quite distinct. One way in which they differ is in regards to the range of people to whom each argument would award the freedom to cross borders. The freedom argument would award this freedom to

measures that assist poor people in their home state we still have reason to prefer the latter.

everyone. The poverty argument would award it only to those people who, by migrating, stand to benefit the global poor. Since not everyone, by migrating, stands to benefit the global poor, the poverty argument would not award the freedom to migrate to everyone. If a Mexican peasant and an Oxford don wished to cross the US border, the poverty argument would support the claim of the former but probably not the latter; the freedom argument would support the claims of both. A second way in which the arguments differ is that while the poverty argument requires rich states to admit poor people if they fail to provide alternative means of assistance, the freedom argument would continue to demand free movement even if rich states did provide the assistance they owe. In these respects, the freedom argument constitutes a more fundamental challenge to immigration restrictions.

Theorists defending immigration restrictions have tended to concede the poverty argument and reject the freedom argument. They have conceded the poverty argument precisely because it is an argument against immigration restrictions under current circumstances not immigration restrictions per se. As long as rich states meet their duties to the global poor by other means, these theorists argue, they are morally free to exclude foreigners from their territory. Any right poor people currently hold to cross international borders is merely a remedial right (Kymlicka, 2001, p. 271; Miller, 2005, pp. 195-196; Walzer, 1983, p. 48; Wellman, 2008, pp. 127-130).

Theorists defending immigration restrictions have rejected the freedom argument because they contend that states have a right to control their borders, which international freedom of movement is of insufficient value to outweigh.³ Two prominent arguments

³ Below I concentrate on arguments for the first part of this claim, that states have a right to control their borders. For arguments for the second part of the claim, that international freedom of movement is of

for a state's right to control its borders are from cultural membership and territorial attachment. The cultural membership argument holds that cultures play an important role in people's lives and as such deserve respect. In the case of national cultures, people are entitled to be able to live in a territory in which their culture enjoys national status insofar as it is widely shared amongst the people that live there and reflected in the territory's public institutions (Kymlicka, 1995, pp. 84-93; Miller, 1995, pp. 85-88). If immigration restrictions were lifted, people living within host states could find the national status of their culture, if not the culture itself, under threat, as immigrants with different cultures take up residence. To protect the value of cultural membership then, states must have the right to exclude foreigners from their territory (Kymlicka, 2001, pp. 264-270; Miller, 2005, pp. 199-201; Walzer, 1983, pp. 38-39).

The territorial attachment argument claims that people have important ties connecting them to the physical environment of their home state. One such tie is the fact that by living in a country and labouring upon its land, people shape their physical surroundings in various ways. The environment thus comes to bear the marks of their ideas and traditions. People also tend to have an emotional attachment to their home state's territory: they often feel a sense of belonging to it which they do not feel in the case of other states. This sense of belonging is reflected and reinforced in the national cultures to which many belong: in the myths, songs and artworks these cultures generate (Meisels, 2003, pp. 35-37; Miller, 2007, pp. 218-219). Since many people have this connection to their host state's territory, it is argued, they have an important interest in protecting and controlling that territory. Unrestricted immigration could lead to dramatic changes to a host state's territory and perhaps even the degradation of its physical

insufficient value to outweigh this right see Miller, 2007, pp. 204-209; Wellman, 2008, p. 135.

environment. If citizens of a state are entitled to protect and control their territory then, it is argued, they are entitled to prevent foreigners from entering it (Miller, 2007, pp. 217-221; Pevnick, Cararo et al., 2008, pp. 251-252; Walzer, 1983, pp. 42-48).

In summary, the immigration debate is characterised by both a point of general consensus and a point of substantial disagreement. The point of general consensus is that rich states must admit poor people as immigrants if they fail to provide the assistance they owe them by other means. The point of substantial disagreement concerns whether states must continue to admit foreigners even if they provide the assistance they owe. Theorists criticising immigration restrictions have argued that certain values, such as freedom of movement, require states to continue to admit foreigners. Theorists defending immigration restrictions have responded that, because of the importance of such values as cultural membership and territorial attachment, states cannot be expected to continue to admit foreigners once they have fulfilled their duty to assist.

The Choice View

Having summarised the principle arguments in the immigration debate let us turn to consider the choice view. The choice view is a development upon the poverty argument outlined above. The poverty argument holds that rich states are morally required to admit poor people as immigrants as long as they fail to provide the assistance they owe them by alternative means. As it stands, this argument seems compelling. Global poverty is an issue of urgent moral concern and rich states have duties to address it. If rich states are unable or unwilling to fulfil their duties by assisting poor people in

their home states then rich states do indeed seem obligated to admit poor people as immigrants.

There is then, nothing objectionable about the poverty argument in itself. A number of theorists go further, however, arguing not only that rich states must admit poor people as immigrants if they fail to assist poor people in their home states but that rich states are morally permitted to admit poor people as immigrants instead of offering them assistance in their home states in circumstances in which both policies would prove effective at relieving global poverty. In other words, these theorists endorse the choice view, according to which rich states are morally free to choose between assisting poor people in their home states and admitting them as immigrants as a means to address global poverty.⁴

The choice view has found support from numerous theorists, on both sides in the immigration debate. David Miller, who defends immigration restrictions, writes:

[T]he lesson for other states, confronted with people whose lives are less than decent, is that they have a choice: they must either ensure that the basic rights of such people are protected in the places where they live – by aid, by intervention, or by some other means – or they must help them to move to other communities where their lives will be better (Miller, 2005, p. 198).⁵

Christopher Wellman, who also defends immigration restrictions, argues:

⁴ Note that the choice view holds that rich states are morally free to choose between assisting poor people in their home states and admitting them as immigrants *as means to address global poverty*, not that rich states remain free to choose between these options once other issues of concern are put on the table. Theorists opposing immigration restrictions can thus support the choice view without direct contradiction since they can argue that rich states may choose between these policies when addressing global poverty whilst requiring them to lift their immigration restrictions when faced with other (non-poverty related) demands, e.g. the demand for international freedom of movement.

⁵ Note that the choice Miller offers rich states is not so much between admitting and assisting but between two kinds of positive assisting: assisting poor people to live a decent life in their home state and assisting poor people to migrate. However Miller, like the other theorists quoted, would still allow rich states to treat migration as an alternative to providing poor people with the assistance they require in order to stay in their home state (which is likely to be different to the assistance they require in order to migrate). He thus stands open to the objection developed below.

[N]o matter how substantial their duties of distributive justice, wealthier countries need not open their borders. At most, affluent societies are duty-bound to choose between allowing needy foreigners to enter their society or sending some of their wealth to those less fortunate (Wellman, 2008, p. 127).⁶

Michael Walzer, in his defence of immigration restrictions, likewise contends that rich states “face a choice” to either “share their wealth with necessitous strangers outside their country or with necessitous strangers inside their country” (Walzer, 1983, p. p48).

On the other side of the debate, Michael Blake, who in recent work has condemns many states for restricting immigration, has nevertheless argued that when it comes to meeting the needs of the global poor:

[W]e can allow that a state will have some discretion ... It will face demanding obligations, but can determine how much of these obligations will be met through immigration and how much will be met through alternative means (Blake, 2002, p. 281).⁷

Finally, Veit Bader, who calls for “fairly open borders”, expresses his support for the choice view with the slogan: ‘Open your wallets or open your borders!’ (Bader, 2005, p. 341).⁸

The choice view, that states are free to choose between immigration and its alternatives when addressing global poverty, has garnered wide support. Yet the view is mistaken. Whenever rich states can, without severe cost, fulfil their duties to the global poor by assisting them in their home state they should do so. To adopt an immigration-

⁶ ‘At most’ because Wellman follows other theorists in arguing that aid may be a more effective means of assisting the global poor than immigration.

⁷ Blake’s recent condemnation of many states for restricting immigration can be found in a co-authored article with Matthias Risse. Blake and Risse argue that states which restrict immigration yet relatively underuse their natural resources violate the principle that the earth’s territory is the common property of humankind. See Blake and Risse, 2009,

⁸ In addition, Joseph Carens and Robert Goodin, while not explicitly supporting the choice view, nevertheless fail to rule it out. They decry the injustice poor people suffer when they are excluded from rich states without being offered assistance in their home state but say nothing of the injustice suffered by poor people who are admitted by rich states instead of being offered assistance in their home state. See Carens, 1992; Goodin, 1992.

based solution to poverty instead is to commit an injustice for it violates the human right to stay.

The Right to Stay

Before defending the claim that a failure to assist can violate the human right to stay let me explain what the human right to stay is and why people have it. Although some aspects of the human right to stay already enjoy recognition in international law, the right I shall argue for is a moral, not a legal, human right.⁹ At core it is a right not to be forced to leave one's home state.¹⁰ The right thus seeks to protect people against at least three sorts of threat. The first is expulsion: the right seeks to protect people against being forcibly expelled from their state at the orders of their government or some other agent. The second is persecution: the right seeks to protect people from being forced to leave their state for want of security or liberty. The third is desperate poverty: the right seeks to protect people against having to leave their state in order satisfy their basic needs of subsistence. Since expulsion and persecution represent violations of the human right to stay, refugees constitute one group of people whose right to stay has been violated. Since, as I shall argue, desperate poverty can also represent a violation of the human right to stay, economic migrants, who are desperately poor, form a second group of people whose right to stay has been violated.

⁹ Article 9 of the Universal Declaration of Human Rights (1948) states that "No one shall be subjected to arbitrary arrest, detention or exile". Article 49 of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War (1949) condemns the use of deportation and forced population transfers during war. On the difference between legal and moral human rights see Pogge, 2007, p. 13.

¹⁰ People may also have a human right to stay in their locality and/or a human right to stay in a foreign state in which they are resident, but I shall not argue for either of these further rights here. However, see n. 16 below (on the idea of a right to stay in one's locality) and Carens, 2002 (for the argument that people have a right to stay in a foreign state in which they are resident).

Admittedly the threats referred to are only a subset of the factors that cause international migration. People can and do migrate voluntarily, under circumstances and for reasons which should not arouse moral concern. The right to stay does not stand in opposition to migration itself but rather to certain causes of migration, in particular those that force people to leave their home state by denying them any reasonable alternative.

Moreover, the human right to stay is not an absolute right. There are likely to be circumstances under which the costs of upholding the right to stay are sufficiently grave to justify its restriction, a point I shall return to in the next section. Indeed, on the most plausible accounts of human rights, few, if any, human rights are absolute. On this view human rights are “resistant to trade-offs but not too resistant” (Griffin, 2008, p. 37). When the costs of upholding a human right are particularly grave, it may be legitimate for a duty-bearer to refuse to fulfil the duties the right ordinarily entails. Under ordinary circumstances, however, duty-bearers must fulfil their duties. The right to stay can thus be summarised as a non-absolute right which, at core, protects people against those factors that might otherwise force them to leave.

Why do people have a human right to stay in their home state? There are at least three powerful arguments for the right: one from freedom of movement, a second from cultural membership and a third from territorial attachment. Since it is these three values which feature prominently in the immigration debate, theorists in that debate should support the human right to stay.

Consider first freedom of movement, the value championed by critiques of immigration restrictions. Freedom of movement, by definition, entails the freedom to stay. One has freedom of movement if one has control over one's movements and one

does not have control over one's movements if one is forced to move. When a number of Native Americans tribes, such as the Creek and the Cherokee, were death marched out of their homelands in the south-eastern United States in the 1830s, they were not prevented from moving, but they were nevertheless denied freedom of movement. The right to freedom of movement includes the right to stay as well as the right to move.¹¹

The fact that commitment to freedom of movement entails the right to stay can also be seen from the fact that the same interest is at stake in each case. This is the interest that people have in being able to freely make personal decisions without restriction on their range of options. Theorists who make the freedom argument against immigration restrictions note that these restrictions prevent people from accessing options in other states: if someone is prevented from entering another state then they cannot get a job in that state, join one of its religious institutions or visit friends and family who live there. Yet the same is true if people are forced to leave their home state: their ability to access such options in their home state is likewise curtailed.

Theorists who criticise immigration restrictions on freedom grounds should thus support the right to stay. Indeed, they have reason to accord the right to stay even more importance than the right to immigrate they argue for. This is because the options that are most important to us are normally situated in our home state. These are the options we have already chosen and made an integral part of our lives: our family, our friends, our religion, our career, etc. It is ordinarily worse if these options, which we are currently committed to, are taken away from us than if further options, to which we have made no such commitment, are removed from our reach (Raz, 1986, p. 411). Sad as it may be if

¹¹ James Nickel makes a closely related point. See Nickel, 1998, p. 631.

someone cannot enter a foreign state, it is ordinarily worse if they are forced to leave their own (Carens, 1992, p. 29).

Theorists defending immigration restrictions should also support the right to stay, because the right to stay is entailed by values they champion: cultural membership and territorial attachment. A commitment to cultural membership entails the right to stay because one is not able to live in a territory in which one's culture is awarded national status if one is forced to leave one's home state. Defenders of immigration restrictions argue that people are entitled to live in a territory in which their culture enjoys national status. Yet they also argue that it is unrealistic, if not unreasonable, to demand that an immigrant's culture be awarded national status by the state to which they immigrate (Kymlicka, 1995, pp. 95-100; Miller, 1995, p. 129). If people are entitled to live in a territory in which their culture enjoys national status, but cannot expect to have their culture awarded national status elsewhere, then they must have a right to stay in their home state.

A commitment to territorial attachment entails a right to stay because when people are forced to leave their home state, they are forced to leave its territory: they are unable to continue to develop its land or enjoy living in a place where they feel a special sense of belonging. Some people who are forced to leave their home state may, after a period of time, come to lose their attachment to their home state's territory as they become settled elsewhere, but even when this is the case it does not negate the fact that an injustice was done to them when they were forced to leave.¹² If the theorists defending immigration restrictions on territorial grounds are correct, the attachment that people feel for their home state is morally important and can justify certain entitlements,

¹² For relevant discussion see Waldron, 1992.

such as the right to exclude foreigners from the territory. Yet if this attachment is so important that it can justify the right to exclude, then it can also justify the right to stay. Indeed, the ability to exclude foreigners from a territory is of questionable value to the people who live there if they cannot remain there themselves. If the attachment people feel for their home state's territory is morally important, people must have the right to stay in their home state.

Having presented these three arguments for the right to remain in one's state it is worth pointing out their common feature: all three defend the importance of allowing people to maintain certain connections to their home state. In the case of freedom of movement, the concern is that people must be free to maintain (as well as create) personal connections to friends, family, jobs, religions etc, situated in their home state. In the case of cultural membership and territorial attachment, the concern is to allow people to maintain connections to their home state's cultural and physical environment.

While the three arguments share this common feature, they are nevertheless distinct arguments. One can support the right to stay without endorsing all three. As long as one deems at least one of these three values important, as many theorists in the immigration debate do, then one should support the human right to stay in one's home state.¹³

The Failure to Assist as a Violation of the Right to Stay

The idea that people have a human right to stay that protects them against threats of expulsion and persecution may not seem controversial, but why should the human

¹³ There may, in addition, be other arguments for the right to stay that are independent of all these values. My point is not that if one supports the right to stay one must be committed to any of these values but the reverse: if one is committed to any one of these values one must support the right to stay.

right to stay entail a duty to assist poor people in their home state? To answer this question we should first distinguish between two groups of poor people: those that may be described as “desperately poor” since they lack the means to satisfy their basic needs to shelter, health care, subsistence, etc., and those who can satisfy their basic needs but are nevertheless poor when compared to most of those living in rich states. As we have noted, theorists disagree over whether rich states have a duty to assist poor people who have enough to satisfy their basic needs, but there is general agreement that rich states do have a duty to assist desperately poor people (so defined). Moreover, whether one adopts an egalitarian or sufficiency view of global distributive justice, relieving desperate poverty is clearly the more pressing moral concern. For these reasons, in making my argument, I shall focus primarily on the case of the desperately poor and only later turn to the case of poor people whose basic needs have been satisfied.¹⁴

In the case of the desperately poor, the important point to note is that migrants who migrate to escape desperate poverty are forced to migrate. Someone can be forced to do something not only by being directly coerced to do it, but also by lacking any reasonable alternative to doing it (Cohen, 1988, pp. 238-254). A life led in desperate poverty in a poor state cannot be considered a reasonable alternative to the opportunity to satisfy one's basic needs in a rich state. Desperately poor people who migrate from poor to rich states in search of a better life should thus be regarded as people who are forced to leave their home state. If people have a human right to stay which protects them against

¹⁴ In focussing on the desperately poor I do not mean to suggest that they constitute the largest group of immigrants. The world's poorest people tend to migrate in smaller numbers than the better off poor. However, one reason why more desperately poor people do not migrate is that immigration restrictions prevent them. If a rich state acted in accordance with the choice view and chose to address global poverty by lifting these restrictions, the number of desperately poor immigrants would almost certainly increase. See Hatton and Williamson, 2005.

being forced to leave their home state, then people also have a right to have their basic needs addressed within their home state. A migration-based approach to global poverty that does not seek to assist desperately poor people in their home state thus stands in need of special justification. Without such justification, it violates the human right to stay.

It may be objected here that to conceive of the right to stay as entailing a duty to assist desperately poor people in their home state makes it, in part, a positive right, when if conceived only as a right not to be expelled or persecuted, it remains a purely negative right. Some theorists reject the idea that human rights can be positive. A common complaint underlying various objections to positive human rights is that they threaten to cheapen the language of human rights by abandoning the connection between rights and duties. If rights language is to maintain its force, it is argued, we should restrict its use to situations in which a duty-bearer can be identified who is able to provide the goods to which the right-holder lays claim. This sort of complaint underlies a number of more specific objections to the idea of positive human rights. One objection, for instance, holds that resource scarcities in poor countries make positive human rights to even basic goods unfeasible (Cranston, 1973, pp. 66-67). A second, related, objection is that even when positive human rights can individually be fulfilled, they may nevertheless conflict when pursued together. When rights conflict some rights must go unfulfilled but then what sense is there in calling them rights (Fried, 1978, p. 113)? A third objection holds that one can only identify duty-bearers responsible for securing positive rights when one has institutions tasked with assigning correlative duties. Since there are no global institutions fulfilling this task, there cannot be any positive human rights (O'Neill, 2000, pp. 98-105).

If one does reject the idea of positive human rights, for any of these reasons, then it may seem that one should reject the suggestion that the human right to stay in one's home state entails a duty upon rich states to provide assistance to poor people in their home states. There are however three points to be made in reply. First, the arguments made against positive human rights are far from compelling. The connection between rights and duties is an important one, but positive human rights do not require its abandonment. What is required rather is an appreciation of the complex relationship between rights and duties: the fact that for each right there may be a variety of duty-bearers obligated to perform a number of different duties. Thus, in relation to the objection that positive human rights to basic goods are unfeasible, the objection ceases to be plausible once we recognise that these rights entail duties upon rich states, as well as poor ones. Rich states are not subject to same resource scarcities as poor states, which is why they are widely thought to be obligated to assist (Miller, 2007, pp. 166-167; Pogge, 1997, pp. 16-17; Rawls, 1999, p. 106; Shue, 1996, p. 103).

In regards to the second objection, it is true that in some instances positive human rights may conflict (I consider an example below) but human rights, properly understood, can conflict without ceasing to function as genuine moral demands. As Jeremy Waldron has argued, human rights entail not only direct duties demanding their satisfaction but various background duties demanding the creation of conditions under which the rights can be satisfied without conflicting with others. These background duties remain even when, as a result of rights conflicts, the primary duty cannot be fulfilled. In this way "an individual's right does not simply disappear from view once it has been traded off against

the rights of others” but “remains in the picture and must be taken seriously as a residual source of other duties and obligations” (Waldron, 1989, p. 512).

Finally, while it is true that positive human rights are better realised when there are institutions tasked with assigning correlative duties to particular duty-bearers, the existence of these human rights does not depend on the existence of such institutions. Even in the absence of duty-assigning institutions, individuals and states can still be subject to correlative duties: for instance, the duty to establish duty-assigning institutions could itself be a duty correlative to a human right (Tasioulas, 2007, pp. 91-91). This seems likely in the case of the human right to stay. Rich states might better provide the assistance they owe to protect poor people against forced migration if they establish an institution to assign which states have responsibility for assisting which poor people rather than trying to fulfil their duties in an uncoordinated fashion. If that is the case, there may be a duty, itself correlative to the human right to stay, to establish such a duty-assigning institution.

The idea of positive human rights thus withstands common arguments made against it: this is my first reply against the objection that the right to stay cannot entail a duty to assist since this would make it, in part, a positive right. The second reply is that even without this duty to assist, the right to stay would still, in part, be a positive right since even in its supposedly negative aspect, as a right not to be expelled or persecuted, it entails positive duties. The positive duties in questions are duties upon states and other relevant authorities to actively protect people against expulsion and persecution. Thus if a criminal gang is kidnapping women in one country and trafficking them overseas, the right to stay demands that action be taken to stop them. Since the human right to stay

already entails positive duties of this sort it is a mistake to object to the idea that it also entails a duty to assist people in poor states on the grounds that this would make it, in part, a positive right (see Shue, 1996, pp. 34-64).

The third reply challenges the assumption, implicit in the objection, that rich states play no role in causing global poverty. Thomas Pogge has forcefully argued that, contrary to this assumption, rich states are actively responsible for causing global poverty insofar as they enforce a global coercive order that works to the detriment of the global poor (Pogge, 2002, pp. 139-145). I do not have space to defend Pogge's argument here but if he is correct we need to reconceptualise our problem. If rich states share responsibility for causing global poverty then those that use immigration to alleviate poverty are not merely failing to assist poor people to stay in their home state, they are actively forcing them to leave. In that case, one need not invoke a positive right to argue that rich states must adopt other means of addressing poverty: the invocation of a negative right against forced migration would suffice.

An objection to my argument based on an objection to positive rights in general cannot then be sustained. There is, however, a second, more specific objection that deserves attention, namely that a duty to assist desperately poor people in their home state rather than admit them as immigrants is too demanding, since the relative cost of pursuing the former policy could be extremely high. Imagine that a poor state has both a large population and a poor climate, making it hard for the people to satisfy their needs even with assistance from outside. Imagine that there is also a rich state with something like the reverse conditions: it has a thriving economy and a labour shortage. Under these conditions it could be extremely costly for the rich state to provide sufficient assistance to

all the desperately poor people in their home state compared to a policy of admitting at least some of them as immigrants, to work in its economy. In such a case it may seem perverse to demand that the rich state assists everyone in their home state, spending resources which could be used to fund other important projects.¹⁵

Now there is some truth to this objection but it does not threaten my argument. The truth to the objection is that there may be circumstances, when the relative costs of assisting people in their home state are particularly severe, in which it is permissible for a rich state to admit poor people as immigrants instead. This point does not threaten the truth of my argument since, as I have stressed, the human right to stay, like other human rights, is non-absolute. When the relative costs of assisting people in their home state are particularly severe, it is permissible for a rich state to admit poor people as immigrants rather than provide assistance to them in their home state.

When are the relative costs of assisting people in their home state severe enough to justify a refusal to assist poor people in their home state? A full answer to this question would require a general theory of the justified restrictions that may be placed on human rights. Rather than presenting any such general theory here let me offer an example of a case in which I think it would be permissible for a rich state to admit poor people as immigrants rather than offer them assistance in their home state. Suppose that a rich state has limited funds with which to address global poverty and that it is more expensive for it to assist people in their home state than admit them as immigrants. Suppose further that if it chose to admit some poor people as immigrants, rather than

¹⁵ A second example in which assisting people in their home state would be relatively costly is one in which the government of a poor state prevents rich states from providing its citizens with the assistance they are entitled to. Under these circumstances, providing assistance to people in their home state may require some form of hostile intervention which could prove extremely costly for the intervening state compared with a policy of admitting the poor people as immigrants.

assist them in their home state, it would be able to free up funds that could be used to assist greater numbers of desperately poor people. Under these circumstances it seems permissible for the rich state to admit people as immigrants instead of offering them assistance in their home state. Important as it is that some people are free to stay in their home state it is surely even more important that more people have the resources to fulfil their basic needs. So it seems morally acceptable to trade-off the right to stay for the right to subsistence when the two conflict. (Recall, however, Waldron's point that trade-offs do not negate all duties. The right to stay would continue to entail background duties to seek conditions under which it could be satisfied – e.g. a duty to find cheaper means to assist poor people in their home state - even when, under current conditions, the right to stay could be permissibly traded-off for the right to subsistence.)

An example of a case in which it is not acceptable for a rich state to refuse to assist people in their home state would be one in which a rich state chose to admit them as immigrants in order to avoid a relatively minor cost. Suppose for instance that a rich state chose to admit rather than aid simply because assisting people in their home state would require raising taxes when its citizens would prefer to spend money on luxuries. Less money for luxuries represents a cost, but not a severe one. A state which acted in this way would violate the human right to stay.¹⁶

The idea of a non-absolute, human right to stay remains importantly distinct from the choice view. According to the choice view, it is simply up to rich states to choose whether they would prefer to fulfil their duties to the global poor by admitting poor people as immigrants or by assisting them in their home state. The choice view would

¹⁶ See Henry Shue's account of acceptable and unacceptable human rights trade-offs in Shue, 1996, pp. 111-130.

thus permit a rich state to admit desperately poor people as immigrants even when it could offer them assistance in their home state at little or no greater cost. On the view I have presented here, such action is unacceptable.

While the idea of a human right to stay challenges the choice view, theorists proposing the choice view provide no argument against this challenge. They do not, for instance, present the objections explored in this section. They provide no argument against positive human rights: indeed at least one of these theorists defends the existence of positive human rights (see Miller, 2007, pp. 163-200). Nor do they argue that a duty to assist people in their home state would be too demanding. Indeed these theorists are poorly placed to make arguments against imposing demanding duties upon rich states since the choice view could itself prove extremely demanding. This will be the case whenever both options, to admit and to aid, entail large costs. There will be circumstances when it is costly for a rich state to assist poor people in their home state (e.g. because the home state suffers from a poor climate) and yet also costly to admit them as immigrants (because further immigration would threaten such problems as environmental destruction and loss of cultural identity). If supporters of the choice view are themselves to avoid placing overly burdensome duties upon rich states they will have to limit those duties by making some similar exception in cases of severe cost, of the sort I have made above.¹⁷

Theorists supporting the choice view thus offer no defence against the challenge presented in this article. Why then do they ignore the claims of desperately poor people to stay in their home state? One possibility is that they simply have not given sufficient consideration to the fact that many people from poor states would not want to move to

¹⁷ Michael Blake does just that. See Blake, 2002, p288, n21.

rich states if they had a reasonable alternative. It can be easy to overlook this fact because so many poor people are trying so desperately hard to enter rich states. If one group of people are desperately trying to do something then it can seem natural to assume that their highest order preference is to do it. Once one makes that assumption, however, one will be alive to the possibility that injustice obtains in barriers preventing them from doing what they are trying to do, but dead to the possibility that injustice obtains in the fact that they are trying at all.

Desperately poor people, I have argued, have a right not to be forced to leave their home state and therefore have a right to receive the assistance they are owed in their home state. But what about poor people who are not desperately poor? Some theories of global justice, such as global egalitarianism, argue that even those poor people whose basic needs have been fulfilled are entitled to a greater share of global wealth. Let us suppose, for the sake of argument, that these theories are correct: would the argument I have made so far extend to a demand that the poor-but-not-desperately-poor also receive assistance in their home state rather than having to migrate to achieve their fair share? Not necessarily. Everything hinges on how we define what a reasonable alternative to migrating is. It seems plausible that someone who has little more than enough to cover their basic needs still has no reasonable alternative to migrating. On the other hand, it is implausible to think everyone who has less than an equal share of global wealth, no matter how well off they are in absolute terms, has no reasonable alternative to migrating.¹⁸ Not every poor person that migrates is forced to migrate. So the argument I have presented so far could not rule out the use of immigration as an alternative to

¹⁸ For relevant discussion see Cohen, 1988, pp. 247-250.

overseas assistance as a means to redistribute wealth to the better-off individuals amongst the global poor.

I think, however, a different argument can be offered for why, if we assume an egalitarian account of global distributive justice to be correct, even the better-off poor have a right to receive the assistance they are owed in their home state rather than having to migrate abroad. This argument holds that if people are entitled to a certain share of social goods, it is unreasonable to expect them to leave their home state in order to achieve it. Again we must recall here that people have important personal, cultural and territorial ties which connect them to their home state. Because people have these ties, they should not be expected to migrate to a foreign state if they are to enjoy a level of wellbeing to which, by hypothesis, they are entitled. While poor people who are not desperately poor may not be forced to migrate if they are refused assistance in their home state, such a refusal nevertheless leaves them in a position where they are required to migrate if they wish to receive their just entitlements. Given the important connections people have to their home state, such a requirement seems unreasonable. People should not have to abandon some of their core commitments in order to achieve that which is justly theirs in any case. The right to stay in other words should be thought to include more than simply the right not to be forced to leave one's home state but also a right not to be required to leave one's home state in order to achieve one's just entitlements.¹⁹

¹⁹ It is interesting to note reaction to a UK think-tank report that called for poverty in the North of England to be addressed by mass migration to the South. The suggestion was described as 'insane' by Conservative Party leader, David Cameron and 'the most insulting and ignorant policy I've ever heard' by former Deputy Prime Minister (and Northerner) John Prescott. Neither Cameron nor Prescott explained what they considered to be so insane and insulting about the idea but one possibility is they deemed it unreasonable to expect people in the North of England to move south in order to enjoy their share of national prosperity. For the report see: Leunig and Swaffield, 2008. For reaction to it see: BBC News, 2008.

Conclusion

People have a human right to stay in their home state. This human right is entailed by the values of freedom of movement, cultural membership and territorial attachment. Because people have a human right to stay, rich states should seek to offer assistance to poor people in their home state. It is only when offering assistance to poor people in their home state would be impossible or entail severe costs, that rich states may resort to immigration instead. To address global poverty using immigration without first seeking to assist poor people in their home state is to commit an injustice for it involves failing to protect desperately poor people against being forced to migrate and poor people in general against the necessity of migrating in order to obtain their just entitlements.

This article has not sought to intervene in the debate over the justice of immigration restrictions. Nor has it objected to immigration per se. Instead it has argued that both sides in that debate, given their own commitments, should oppose the use of immigration to address global poverty as an alternative to assisting people in their home state. Theorists should continue to debate the claims of people who wish to migrate across borders, but in doing so they should not ignore the claims of those that wish to stay behind. In a just world, people would continue to have many reasons to migrate, but poverty, at least of an extreme kind, would not be one of them.

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